

The Honorable Thomas O. Rice

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UNITED STATES DISTRICT COURT
EASTERN OF WASHINGTON

ANNETTE KRAUSE,

Plaintiff,

v.

ADAMS COUNTY,

Defendant.

No. 2:19-cv-00268-TOR

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

12/19/2019

Without Oral Argument

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff is a long-time employee of the Adams County Sheriff's Office. She claims the elected Board of County Commissioners have mis-classified her, and argues that her salary is too low. She does not claim this was based on any invidious or animus-based discrimination. She claims her mis-classification violates her equal protection rights under the U.S. Constitution. She claims a violation of the Washington State Constitution that is remedial

1 through RCW 49.60, the Washington Law Against Discrimination (WLAD).
2 She claims a breach of “binding agreements.”

3 State law vests with the elected Board of County Commissioners the
4 sole and exclusive right to set salary and other budget-based decisions. The
5 Board of County Commissioners exercised their statutory right to place
6 Plaintiff into the salary system and set the amount of her salary. In 2018, they
7 took a public vote on whether to re-classify her to a higher salary schedule, at
8 the request of the Sheriff. That vote failed 2-1. This was the decision of
9 elected officials who answer to their constituency when it comes to matter
10 involving the public fisc.
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14 The Washington Constitution does not provide her any remedy. She did
15 not claim discrimination based on any protected class, so the WLAD claim
16 should be dismissed. Her equal protection claims fail because the Board’s vote
17 meets the low threshold of a rational decision and this lawsuit seems to violate
18 the “class of one” doctrine. There are no contracts that were violated.
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20 Summary judgment should be granted.
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22 II. STATEMENT OF FACTS

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24 Adams County Sheriff’s Office operates its employment system under a
25 well-established civil service scheme. Declaration of Perez. By Citizen
26 Initiative passed in 1958, Washington established a Civil Service law.
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1 Initiative Measure No. 23, approved November 4, 1958, RCW 41, et seq. The
2 purpose of these laws is to “establish an orderly system of personnel
3 administration based upon merit principles of appointment and promotion.”
4 *Crippen v. City of Bellevue*, 61 Wn. App. 251, 257, 810 P.2d 50, 53 (1991);
5 *Washington Fed’n of State Emp., AFL-CIO, Council 28 v. Spokane Cnty. Coll.*,
6 90 Wn.2d 698, 702, 585 P.2d 474, 477 (1978) (“The policy of the civil service
7 system is to establish merit as the basis for selecting personnel.”)
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10 Under a civil service system, employees can be exempted from the
11 coverage of the law. *Washington Fed’n of State Emp., AFL-CIO, Council 28 v.*
12 *Spokane Cnty. Coll.*, 90 Wn.2d 698, 700, 585 P.2d 474, 476 (1978).
13 Employees covered by the civil service laws are deemed “classified service”
14 members. RCW 41.06.020(5). Employees who are exempted are called
15 “unclassified staff.” They are frequently exempted from civil service laws by
16 statute. *See*, RCW 41.06.072 (exempting staff working for the Department of
17 Community Trade and Economic Development); RCW 41.06.073 (exempting
18 the Department of Ecology Directors “confidential secretary”); RCW
19 41.06.075 (code does not apply to the Office of Financial Management
20 Director’s “confidential secretary.”)
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25 This process holds true for law enforcement agencies in Washington.
26 For example, the Washington State Patrol has “confidential secretaries” for
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1 agency bureau chiefs and the Chief. Those positions are exempt. RCW
2 41.06.093. This exemption flows from the fact that “[y]ou cannot run a
3 government with officials who are forced to keep [their] enemies as their
4 confidential secretaries.” *McDaniel v. Woodard*, 886 F.2d 311, 315 (11th Cir.
5 1989) City police departments have a similar code. RCW 41.12, et seq.

7 The Sheriff Offices of Washington are covered by their own statute.
8 RCW 41.14. et seq. Under this statutory scheme, the Sheriff is empowered to
9 designate certain staff as exempt from the civil service laws. The number of
10 staff that can be exempted depends on the size of the department. RCW 41.14.
11 Under this code, the Adams County Sheriff is entitled to designate four staff as
12 “unclassified” or exempt from the civil service laws. RCW 41.14.070(1)
13 (Sheriff Department with staff between 21 and 50 shall be entitled to designed
14 four staff as unclassified.)

18 Under the code, the Sheriff must select from certain authorized
19 positions. Those are the undersheriff, inspector, chief criminal deputy, chief
20 civil deputy, jail superintendent, and “administrative assistant or
21 administrative secretary.” *Id.*; *Greig v. Metzler*, 33 Wn. App. 223, 230, 653
22 P.2d 1346, 1349 (1982) (statute designates which positions may be deemed
23 unclassified). If a sheriff’s department operates a 911 emergency call system,
24 then the sheriff may designate one unclassified staff position at the call center.

1 Only the sheriff of the county has authority to decide which employees will be
2 deemed exempt or unclassified. Washington Attorney General Opinion 2017
3 NO. 3 (2017)

4
5 In this case, Sheriff Wagner used his statutory discretion to designate
6 “Administrative secretary, Jail commander, Civil Deputy and E911
7 Coordinator” as exempt from civil service laws. Declaration of Perez, Exhibit
8 A. Ms. Krause was the administrative secretary so designated by Sheriff
9 Wagner. *Id.* He made this designation in July 2018, although Ms. Krause had
10 been long designated as unclassified by his predecessors.

11
12 The effect of this designation to an unclassified position, was that Ms.
13 Krause was not part of the classified civil service system. *Id.* As such, Ms.
14 Krause would not have the statutory protections afforded a classified staff. For
15 example, classified staff can only be discharged for cause and only on a
16 written accusation. RCW 41.14.120. Classified staff have the right to appeal
17 certain adverse employment actions to the civil service commission. *Id.*

18
19 The Board of County Commissioners also chose to exempt employees
20 from the provisions of the FLSA. In 2006, the BCC exempted the Sheriff’s
21 Department Administrative Assistant from the FLSA. Declaration of Perez,
22 Exhibit B (Adams County Personnel Policy), Appendix A. BCC Resolution
23 R-35-06. Plaintiff admits this in her [Complaint](#). ECF No. 1 at ¶¶ 2.2 & 2.12.
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1 The Board of County Commissioners have the authority to set staffing
2 levels, ratify budgets and generally set personnel policy. RCW 36.16.070;
3 Declaration of Perez, Exhibit B. The Board has no authority over Sheriff
4 Wagner's decision to designate Ms. Krause as unclassified.
5

6 In 2012, the Board eliminated the Sheriff Mid-Management Salary
7 Schedule and voted to move the Administrative Assistant position to the Non-
8 Union Salary Schedule, Range 8. This occurred on November 19, 2012.
9 Declaration of Perez, Exhibit C (Commissioners' Proceedings Minutes
10 Nov. 19, 2012). Later in December 2012, the BCC voted to move the
11 Administrative Assistant position to Range 9. *Id.*, Exhibit D (Commissioners'
12 Proceedings Minutes Dec. 3, 2012). Ms. Krause remained on that Range 9
13 salary since 2013. Declaration of Perez.
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16 In 2018, the Sheriff requested that the Board re-classify Plaintiff. *Id.* As
17 the minutes show: "Commissioner Marshall moved, Thompson seconded, to
18 reclassify the Administrative Assistant position from the Adams County 8-
19 hour non-union salary schedule to EE1, Step 2, on the Adams County Exempt
20 Employee Salary Schedule. Vote was 2-1 against. Motion failed." *Id.*, Exhibit
21 E (Commissioners' Proceedings Minutes Aug. 8, 2018).
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25 As this shows, the Board made conscious and deliberate decisions about
26 the Administrative Assistant position. It deliberately moved the position from
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1 the eliminated Mid-Management Salary Schedule to the Non-Union Salary
 2 Schedule. It deliberately moved the position from Range 8 to Range 9. It
 3 deliberately voted not to move the position to the EE1, Step 2 on the Exempt
 4 Employee Salary Schedule. All these were done by public process and
 5 recorded in the minutes of the Board. This is all consistent with the
 6 Commissioner's paramount duty to set budgets and salaries. It was all
 7 consistent with state law.
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10 **III. LAW AND ARGUMENT**

11 **A. Plaintiff's Equal Protection Claim Fails the Class of One Test.**

12 Plaintiff does not complain that the County created separate groups for
 13 un-equal treatment. Indeed, she claims the opposite, that she is the "only
 14 exempt employee not included in the County salary schedule." ECF No. 1 at ¶
 15 2.4. This is an impermissible "class of one".
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18 "Our equal protection jurisprudence has typically been concerned with
 19 governmental classifications that 'affect some groups of citizens differently
 20 than others.' *McGowan v. Maryland*, 366 U.S. 420, 425, 81 S. Ct. 1101,
 21 6 L. Ed. 2d 393 (1961). See, e.g., *Ross v. Moffitt*, 417 U.S. 600, 609, 94 S. Ct.
 22 2437, 41 L. Ed. 2d 341 (1974) ('Equal protection' ... emphasizes disparity in
 23 treatment by a State between classes of individuals whose situations are
 24 arguably indistinguishable'); *San Antonio Independent School Dist. v.*
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1 *Rodriguez*, 411 U.S. 1, 60, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973) (Stewart, J.,
 2 concurring) ('[T]he basic concern of the Equal Protection Clause is with state
 3 legislation whose purpose or effect is to create discrete and objectively
 4 identifiable classes'). Plaintiffs in such cases generally allege that they have
 5 been arbitrarily classified as members of an 'identifiable group.' *Personnel*
 6 *Administrator of Mass. v. Feeney*, 442 U.S. 256, 279, 99 S. Ct. 2282, 60 L. Ed.
 7 2d 870 (1979)." *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 601, 128
 8 S. Ct. 2146, 2152–53, 170 L. Ed. 2d 975 (2008)

11 *Enquist* involved an Oregon State employee who claimed she was
 12 singled out for arbitrary treatment. She prevailed on the claim at trial, and the
 13 State appealed. The Ninth Circuit reversed the trial court and the Supreme
 14 Court agreed. Particularly in employment cases, where decisions about
 15 individual employees are at stake, the equal protection clause analysis is
 16 improper:
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19 Thus, the class-of-one theory of equal protection—which
 20 presupposes that like individuals should be treated alike, and
 21 that to treat them differently is to classify them in a way that
 22 must survive at least rationality review—is simply a poor fit in
 23 the public employment context. To treat employees differently
 24 is not to classify them in a way that raises equal protection
 25 concerns. Rather, it is simply to exercise the broad discretion
 26 that typically characterizes the employer-employee relationship.
 27 A challenge that one has been treated individually in this
 context, instead of like everyone else, is a challenge to the
 underlying nature of the government action.

1 *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 605, 128 S. Ct. 2146, 2155,
2 170 L. Ed. 2d 975 (2008).

3 Here, the Court does not need to examine whether Plaintiff's treatment
4 was rationally based. The *Engquist* case says this matter can be dismissed on
5 summary judgment.
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7 This is especially true where the County Commissioners were
8 exercising their statutory authority. This is a function of state law, which vests
9 with the Board of County Commissioners the absolute right to set budgets and
10 compensation of non-elected officials. RCW 36.16.070; *Osborn v. Grant Cnty.*
11 *By & Through Grant Cnty. Comm'rs*, 130 Wn.2d 615, 621, 926 P.2d 911, 914
12 (1996). While the Board cannot dictate who is hired for any such position, its
13 right to set the salary is absolute. *Id. Rudnick v. Pierce Cty.*, 185 Wash. 289,
14 292, 54 P.2d 409, 410 (1936) ("It is the duty of the board of county
15 commissioners to fix the salaries to be paid county employees..."). Allowing
16 claims like Plaintiff, in this particular context, "could jeopardize the delicate
17 balance governments have struck between the rights of public employees and
18 the government's legitimate purpose..." *Engquist v. Oregon Dep't of Agric.*,
19 553 U.S. 591, 607, 128 S. Ct. 2146, 2156, 170 L. Ed. 2d 975 (2008).
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25 **B. The County Has a Rational Basis for Her Classification.**

26 Even if we ignore the *Enquist* bar on this type of case, a party
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1 challenging a classification bears the burden of proving that it violates equal
2 protection. *Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 681, 132 S. Ct.
3 2073, 2080, 182 L. Ed. 2d 998 (2012); *Wash. Educ. Ass'n v. Smith*, 96 Wn.2d
4 601, 609, 638 P.2d 77 (1981). The first step in any equal protection analysis is
5 determining the appropriate standard of review. *Boardman v. Inslee*, 354 F.
6 Supp. 3d 1232, 1249 (W.D. Wash. 2019); *Foley v. Dep't of Fisheries*, 119
7 Wn.2d 783, 789, 837 P.2d 14 (1992). In equal protection cases involving finite
8 state resources where the classification does not turn on a fundamental right or
9 suspect classification, Court's apply the rational basis test. *Regan v. Taxation*
10 *with Representation of Washington*, 461 U.S. 540, 547, 103 S. Ct. 1997, 2002,
11 76 L. Ed. 2d 129 (1983); *Willoughby v. Dep't of Labor & Indus.*, 147 Wn.2d
12 725, 739, 57 P.3d 611 (2002).

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17 A classification must be purely arbitrary to overcome the strong
18 presumption that it is constitutional. *Heller v. Doe by Doe*, 509 U.S. 312, 319,
19 113 S. Ct. 2637, 2642, 125 L. Ed. 2d 257 (1993); *Rhoades v. City of Battle*
20 *Ground*, 115 Wn. App. 752, 759, 63 P.3d 142 (2002), review denied, 149
21 Wn.2d 1028, 78 P.3d 656 (2003).

22
23 Here, Ms. Krause works in a unique position. She is the confidential
24 secretary to the highest law enforcement official of the County. Declaration of
25 Perez. She has access to non-conviction data that is privileged under
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1 RCW 10.97.050(3). She would have access to sensitive law enforcement
2 information that would not be a public record. RCW 42.56.240(1) & (2). She
3 would have access to medical records of Sheriff Department employees who
4 might be injured and seeking accommodation under the ADA. She would have
5 access to internal investigation files whether the allegations were sustained or
6 un-sustained. She would be privy to information about the service of high-risk
7 search warrants or the location of arrest targets.
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10 This unique position is exactly why the legislature vested the Sheriff
11 with the power to exempt her from the civil service protections afforded a
12 typical administrative assistant in the department. And this unique position
13 justifies the County Commissioners to set her salary schedule where they
14 choose. She cannot and should not be compared to others, as others are not
15 working the same job.
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18 **C. There Is No Claim Under the State Constitution.**

19 Plaintiff brings a claim under Article I, Section 12 of the Washington
20 State Constitution. ECF No. 1 at ¶ 5.4. This “requires an independent
21 constitutional analysis from the equal protection clause of the United States
22 Constitution.” *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150
23 Wn.2d 791, 805, 83 P.3d 419, 425 (2004). But the burden to perform that
24 analysis, and to identify a unique equal protection basis under the Washington
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1 State Constitution rests on the proponent. *State v. Gunwall*, 106 Wn.2d 54, 62,
2 720 P.2d 808, 813 (1986). There is no reason to think the Washington Courts
3 would treat this case different than it would be treated under the U.S.
4 Constitutions 14th Amendment. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d
5 334, 340 (2006) (Under Article 1, Section 12 “equal protection does not
6 require that the State treat all persons identically, any classification must be
7 relevant to the purpose for the disparate treatment.”). Under that analysis, both
8 the “class of one” and rational basis tests apply, and summary judgment is
9 appropriate.
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12 **D. There Is No Binding Agreement.**
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14 Plaintiff last cause of action, alleges that there is a written policy which
15 is “binding on the County.” ECF No. 1 at ¶ 7.2.
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17 The County has adopted a personnel policy. Declaration of Perez,
18 Exhibit B. It says, “These guidelines do not establish an employment contract
19 with Adams County.” *Id.*, Section 1.
20

21 The County has adopted a Salary Plan. *Id.*, Section 2. It says,
22 “Employees shall be paid in accordance with the County classification and
23 salary system, as established by the Board of County Commissioners.” *Id.*
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25 The County salary plan says the following: “All salaries established in
26 accordance with the provisions of this manual are subject to the Board of
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Commissioners' final approval of the County's annual budget....A Department Head or Elected Official may recommend an initial rate of pay beyond the minimum of a salary range if an appointee is exceptionally well qualified for or experienced in the position. All pay actions shall be approved by the Board of Commissioners." Declaration of Perez, Exhibit B, Appendix A.

Personnel policies do not create implied employment contracts. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 224, 685 P.2d 1081, 1085 (1984). "General statements of company policy are not binding." *Klontz v. Puget Sound Power & Light Co.*, 90 Wn. App. 186, 190, 951 P.2d 280, 282 (1998). "Only those statements in employment manuals that constitute promises of specific treatment in specific situations are binding." *Quedado v. Boeing Co.*, 168 Wn. App. 363, 369, 276 P.3d 365, 369 (2012)

Here, the County's personnel policies say the opposite. It affirmatively says the personnel policy does not create a contract. When referencing salaries, the personnel policy continuously refers to the powers of the Board to set salaries and budgets. "These guidelines are not intended to and do not supersede the provisions of Title 36 RCW." Declaration of Perez, Exhibit B, Section 1. Title 36 is the source of that Board power.

The County made no binding promises to Plaintiff and her final cause of

1 action should be dismissed.

2 **IV. CONCLUSION**

3 All of the actions taken by the elected Board arise from their absolute
4 statutory right to set budgets, and in turn set salaries. There was no violation of
5 the law here, and the case should be dismissed on summary judgment.
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8 DATED: October 30, 2019

9 KEATING, BUCKLIN & McCORMACK, INC., P.S.

10
11 By: /s/ Andrew Cooley

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DECLARATION OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on October 30, 2019, I electronically filed the foregoing Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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